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7                   **UNITED STATES DISTRICT COURT**  
8                   **DISTRICT OF NEVADA**  
9

10 UNITED STATES OF AMERICA,

11                   Plaintiff,

12 v.

13 ALPINE LAND & RESERVOIR CO., et  
al.,

14                   Defendants.

15                   Equity No. D-183-LDG

16                   Case No. 3:73-cv-00183-LDG  
17                   Subfile No. 3:73-cv-00211-LDG

**ORDER**

16 Re: Nevada State Engineer Ruling  
17 No. 6226

18  
19                   The State Engineer moves to stay (#9) this action, arguing that the petitioner,  
20 Stillwater Farms, also filed a petition for judicial review in the Tenth Judicial District Court  
21 for the State of Nevada. The United States of America opposes the motion, and is joined  
22 in opposition by the Truckee-Carson Irrigation District. Having considered the arguments  
23 of the parties, the Court will deny the motion and will instead set a briefing schedule for this  
24 matter.

25                   The State Engineer argues that the Court should defer to the state court's  
26 jurisdiction pursuant to *Colorado River Water Conservation Dist. v. United States*, 424 U.S.

1 800 (1976). However, this Court has exclusive jurisdiction over appeals of State Engineer  
2 rulings on water rights subject to the Alpine Decree because it was this Court that first  
3 established jurisdiction over the *res* — Carson River water rights — when it adjudicated the  
4 Alpine Decree. See *United States v. Alpine Land & Reservoir Co.*, 174 F.3d 1007, 1013  
5 (9th Cir. 1999) (“*Alpine III*”). Under the *Alpine* and *Orr Ditch* decrees, the administration of  
6 water rights generally follows Nevada state law. See *United States v. Alpine Land &*  
7 *Reservoir Co.* [“*Alpine II*”], 878 F.2d 1217, 1223 (9th Cir. 1989); *United States v. Orr Water*  
8 *Ditch Co.*, 914 F.2d 1302, 1308 (9th Cir. 1990). Nevada state law recognizes that  
9 jurisdiction is meant to lie in the federal court in this instance, by providing that one “feeling  
10 aggrieved by any order or decision of the State Engineer . . . on stream systems where a  
11 decree of court has been entered,” must initiate action for review of the State Engineer  
12 decision “in the court that entered the decree.” Nev. Rev. Stat. § 533.450(1). A court  
13 retains exclusive jurisdiction over the administration of the water decrees it adjudicates.  
14 See *State Engineer of State of Nevada v. South Fork Bank of Te-Moak Tribe of W.*  
15 *Shoshone Indians of Nevada*, 339 F.3d 804, 809 (9<sup>th</sup> Cir. 2003).

16 While the State Engineer argues that its ruling concerns “a state permit right to drain  
17 water that may not be enforced against or affect the decree rights adjudicated by this Court  
18 in any way,” the petition for review goes beyond this narrow argument. Stillwater Farms  
19 seeks to reverse the denial of Application 47786. In so doing, the petitioner concedes that  
20 the United States Fish and Wildlife Service has permits to appropriate water in the  
21 Newlands Reclamation Project, but argues that the USFWS must call for the water.  
22 Perhaps presciently, the State Engineer stated in its ruling that “if [Stillwater Farms] truly  
23 believes that illegal use of water is taking place within the Project without the benefit of a  
24 water right, that issue should be taken to the decree court with jurisdiction and not resolved  
25 by the State Engineer.” Stillwater has indicated that its appeal of the denial of Application  
26 47786 concerns decreed waters rights, thus creating exclusive jurisdiction within this Court.

1       In addition, in appealing the limited permit granted for Application 48476, Stillwater  
2 Farms asserts Ruling #6226 improperly limits the scope of protection to be afforded to the  
3 water right that was granted, and asserts that limited scope of protection afforded by the  
4 State Engineer should be reversed to allow protection against, *inter alia*, illegal diversions.  
5 In light of State Engineer's language concerning the illegal use of water in regards to the  
6 the USFWS diversion of water, and Stillwater Farms' assertion that the USFWS can only  
7 exercise its decreed rights by making a call, Stillwater Farms has further invoked the  
8 exclusive jurisdiction of this Court over its appeal.

9       Therefore, for good cause shown,

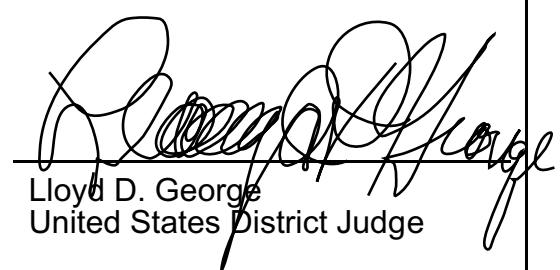
10      **THE COURT ORDERS** that the State Engineer's Motion to Stay (#9) is DENIED;

11      **THE COURT FURTHER ORDERS:**

- 12       a.      That Stillwater Farms (Petitioner) shall file its opening brief within 40 days of  
13             entry of this order.
- 14       b.      That the Nevada State Engineer, and any other Real Party in Interest  
15             (Respondents) opposing the petition for judicial review shall file their briefs  
16             within 30 days after service of Petitioner's brief.
- 17       c.      That Petitioner may file a reply brief within 14 days after service of opposition  
18             briefs.
- 19       d.      That the briefs of the parties shall comply, to the extent practicable, with  
20             Federal Rule of Appellate Procedure 28; provided, however, that the length of  
21             the principal briefs shall not exceed 30 pages and the reply briefs shall not  
22             exceed 15 pages, exclusive of pages containing the table of contents, tables  
23             of citations, and any addendum or exhibits. In addition, the form of the briefs  
24             shall comply with Local Rules 10-1 through 10-5.
- 25       e.      That each party shall prepare and file, with its respective brief, an appendix  
26             that shall contain any portion of the papers or record considered by the State

- 1           Engineer that the party believes is necessary for the Court to review in  
2           considering that party's arguments.
- 3           f. That any motions seeking leave for additional time, leave to file over-length  
4           briefs or other similar motion shall be filed no less than seven days prior to  
5           the scheduled submission date of the brief for which such leave is sought.
- 6           g. That, in addition to the filing of original briefs with the Clerk of the Court, each  
7           party shall deliver a courtesy copy of its brief and appendix to the Chambers  
8           of the Honorable Lloyd D. George, Lloyd D. George U.S. Courthouse, 333  
9           Las Vegas Boulevard South, Room 6073, Las Vegas, Nevada, 89101.

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11           DATED this 26 day of March, 2014.



Lloyd D. George  
United States District Judge

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